APPEAL NO. 010833
FILED JUNE 4, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 22, 2001. The hearing officer resolved the issue of impairment rating (IR) by determining that the appellant (claimant herein) had an impairment rating (IR) of nine percent based upon the amended report of the designated doctor. The claimant appeals arguing that the hearing officer erred in relying on the amended report of the designated doctor in that the designated doctor's report was not amended in a reasonable amount of time; in that the designated doctor amended his report without re-examining the claimant; and in that there was insufficient evidence that the designated doctor actually completed the amended certification. The claimant argues that the hearing officer should have given presumptive weight to the designated doctor's original 27% IR. The respondent (carrier herein) replies that the designated doctor's amended initial IR certification was consistent with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), whereas the original certification was not. The carrier also argues that delay in obtaining an amended rating was due to the fact that the clarification process took some time and was not due to inaction by the carrier. Finally, the carrier argues that there is sufficient evidence that the designated doctor completed, or at the very least ratified, the amended certification.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer summarizes the evidence in detail in his decision and we adopt his rendition of the evidence. We will therefore only briefly touch on the evidence most germane to the appeal. This includes the fact the parties stipulated that the claimant sustained a compensable low back and left hip injury on _____; that Dr. S was the designated doctor selected by the Texas Workers' Compensation Commission (Commission); and that the claimant reached maximum medical improvement on September 1, 1999. Dr. S completed a Report of Medical Evaluation (TWCC-69) dated September 1, 1999, in which he a assigned a 27% IR. The carrier obtained a January 3, 2000, peer review report from Mr. A, in which Mr. A contended that the designed doctor did not follow the protocols of the AMA Guides in assessing IR due to loss of range of motion (ROM). The Commission sought clarification from Dr. S on February 14, 2000, and on March 1, 2000, Dr. S responded and refused to change his IR. On March 15, 2000, Mr. A wrote a letter reiterating his position that the designated doctor had not correctly assessed IR based upon loss of ROM. The claimant went to Dr. S's office on May 11, 2000, and his ROM was retested by a technician in Dr. S's office. On June 2, 2000, an amended TWCC-69 was issued, which contained Dr. S's signature, certifying the claimant

had a nine percent IR. In a letter of January 2, 2001, Dr. S wrote a letter to the Commission confirming that the correct IR in this case was nine percent.

The hearing officer's factual findings included the following:

FINDINGS OF FACT

8. During the period of time between the original TWCC-69 on September 1, 1999, and the amended TWCC-69 on June 2, 2000, the Commission, the Carrier and the Claimant engaged in a continuing course of action to seek clarification from [Dr. S] about possible errors in his original TWCC-69.

9. [Dr. S] signed the amended TWCC-69.

10. On January 2, 2000, [Dr. S] re-affirmed in a signed document his amended TWCC-69.

11. The great weight of the other medical evidence is not contrary to the amended report of [Dr. S] which assigns a 9% [IR].

In reviewing these factual findings, we note that Section 410.165(a) provides the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find sufficient evidence to support the above factual findings of the hearing officer.

In light of the hearing officer's factual findings, we find no error in the hearing officer's conclusion that Dr. S's amended certification was completed in a reasonable amount of time. We note that the carrier argues that there is no statute or rule that

requires that the amendment be effected in a particular time period. Nor do we find any error in the designated doctor's report due to lack of re-examination prior to the amendment of his certification. The only dispute concerning the original certification was over whether the loss of ROM was properly calculated under the AMA Guides. The claimant's IR was retested by a technician under Dr. S's direction. Under these circumstances that was in effect a re-examination of the only component of the original certification that was in dispute. Finally, the claimant argues strongly on appeal that the amended TWCC-69 appears to be a copy of the original TWCC-69 with certain "field" whited out and changed. The claimant argues that this indicates that Dr. S did not resign the TWCC-69 when it was amended. This is a factual question and the hearing officer has found that Dr. S did sign the amended TWCC-69. In any case, it is clear that Dr. S signed the letter of January 2, 2000, reaffirming the amended TWCC-69.

We find no error in the hearing officer's determination that the claimant's IR is nine percent based upon the amended certification of the designated doctor. The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge